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No. 94-75[illegible]

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1996

THE GRAND FRATERNITY ROSAE CRUCIS,

Petitioner,

vs.

WILLIAM B. MOYER, ESQUIRE and GERALD POESNECKER,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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I

COUNTERSTATEMENT OF THE CASE

Pursuant to respondents' obligation under Rule 15, they submit the following Counterstatement of the Case in order to correct the numerous misstatements of fact and impertinent matters that are offered by counsel who has filed the present petition.

As explained below in argument, the actual petitioner in the present appeal is Dr. Paul P. Ricchio who had filed the present action at the District Court level in his own name and on behalf of the "Grand Fraternity Rosae Crucis". The foregoing is correctly known as Fraternitas Rosae Crucis or the Rosicrucian Fraternity. At no time did the legitimate representatives of the Rosicrucian Fraternity ("the Rosicrucians") commence the present federal action. A Petition for Intervention was filed at both the Federal District Court and Federal Court of Appeals level by the persons who have been lawfully found by the Pennsylvania state courts to be the legitimate Supreme Grand Master, his Council of Seven, and by the corporate Boards of Directors of the Rosicrucians.

At the District Court, Dr. Ricchio was appropriately removed as a party by the Honorable Raymond J. Broderick on September 27, 1995, in a Memorandum and Order which Dr. Ricchio has never appealed. The result of that decision was to leave Dr. Ricchio's legal counsel with no natural person or duly recognized corporate body that could be identified and therefore claimed by that counsel to be in lawful control of the Rosicrucians.

This Court has previously reviewed all of the matters which Dr. Ricchio now seeks to bring before it now under the cloak of the "Grand Fraternity Rosae Crucis", an entity which he claims was not represented during the five to six years of Pennsylvania

court litigation. His prior petition to this Court is found at No. 94-757, October Term, 1994. All of the constitutional issues that are inherent in this petition were considered and disposed of both at the Pennsylvania state court level, and were again presented in the Petition for Writ of Certiorari that was submitted to this Court. His "new issue" related to avoidance of the application of the "Rooker-Feldman" doctrine[1] is discussed below.

In order to obtain a fresh basis for challenging his rejection as the leader of the Rosicrucians, Dr. Ricchio sought the aid of the Religious Freedom Restoration Act of 1993, 42 U.S.C. §§ 2000bb, *et seq.*, (hereinafter RFRA) which was the centerpiece of his cause in this federal action. With this Court having declared the foregoing statute unconstitutional, Dr. Ricchio is now relegated to seeking an alternative way to relitigate the constitutional issues that he last presented to this Court in 1994. In order to relitigate these issues, he seeks to avoid the bar created by the Rooker-Feldman doctrine.

A. The underlying religious dispute.

Dr. Ricchio's counsel conveniently misstates for this Court the findings of the numerous decisions of the Pennsylvania state courts in which it was consistently found as a matter of fact and law that your respondent Dr. Gerald E. Poesnecker had never been legally removed as the Supreme Grand Master of the Rosicrucians, and further that Dr. Ricchio had never been endowed in any legal way with the status of "Supreme Grand Master" or with any other position of authority after he and his co-defendants unlawfully seized the Rosicrucian's corporate offices.

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1. *Guarino v. Larsen*, 11 F.3d 1151, 1156 (3rd Cir. 1991); *see District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S. Ct. 149 (1923).

B. The Pennsylvania courts decide who shall be petitioners religious leader.

The decisions of the Court of Common Pleas of Pennsylvania have been upheld by all of the state appellate courts. All have agreed that Dr. Ricchio and the persons previously aligned with him had no positions of authority within the Rosicrucians or its affiliated corporate entities that would have allowed them to take legal control of the Rosicrucian's fraternal and corporate entities. The state courts have also consistently confirmed the plebiscite process conducted by respondent Moyer. That process allowed any legally interested person to come forward and to vote for the persons who would thereafter be in control of those corporate entities. This Court denied Dr. Ricchio's Petition for a Writ of Certiorari on January 9, 1995.

C. The federal courts refuse to intervene.

Just prior to the ruling by the Pennsylvania Commonwealth Court on the matters raised with his second appeal, Dr. Ricchio filed the present federal action. On July 25, 1996, the Federal District Court dismissed Dr. Ricchio's complaint for lack of subject matter jurisdiction while applying the "Rooker-Feldman" doctrine. Judge Broderick held that all of the matters before him had been more than adequately considered at the state court level (*see* Appendix A of petitioner's petition). This decision was upheld by the Court of Appeals for the Third Circuit.

William Moyer was only named as party in order to invoke RFRA, a statute which is now legally defunct. As the appointed Custodian/Receiver of the Court of Common Pleas of Bucks County, (now a dismissed defendant), Moyer should have been likewise dismissed as a defendant on the basis of the Eleventh Amendment to the United States Constitution. The reasons for

his retention as a party were not made clear. Petitioner Ricchio can offer no cognizable theory as to why he should remain as a party.

REASONS FOR DENYING THE WRIT

I.

WAS PETITIONER A PARTY IN THE STATE COURT LITIGATION?

Petitioner, which is the unincorporated fraternal hierarchy was not, and could not under Pennsylvania or federal rules be, separately represented as a party in litigation without naming the individuals who properly represent it as trustees ad litem[2]. Your respondents have consistently pointed out in the lower federal courts that an unincorporated association may not maintain an action solely under its fictitious name. Such an action must be brought by identifiable natural persons who accept all of the legal responsibilities of litigants (*See* F.R.C.P. 23.2). No such persons have come forward in that capacity on behalf of your stated petitioner.

As stated above, the only natural person who is perpetrating this litigation is Dr. Paul Ricchio who by the lower courts ruling no longer has standing as a party in these proceedings. The "Grand Fraternity Rosae Crucis" (as it has been erroneously designated), may only be legally represented by its external operating corporations, or by its recognized and identifiable internal councils and Supreme Grand Master. The legitimate and

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2. Pa.R.C.P. 2152. Actions by Associations. An action prosecuted by an association shall be prosecuted in the name of a member or members thereof as trustees ad litem for such association. An action so prosecuted shall be entitled "X Association by A and B, Trustees ad Litem" against the party defendant.

recognized corporate directors, council members and Supreme Grand Master (Gerald Poesnecker) filed a petition to intervene in both the Federal District Court and the United States Court of Appeals in order to establish that they are in fact the only parties who can claim to represent the named petitioner "Grand Fraternity Rosae Crucis". Every natural person who claimed a position on those boards and councils openly provided the lower court with their full names and addresses. They accepted all of the responsibilities of litigants in this action.

In order to provide a facade of compliance with these legal requirements, petitioner Ricchio's counsel elicited, and filed with the Court of Appeals a dozen spurious affidavits of various persons to whom he casually attributed the status of membership in the Rosicrucians. These persons did not provide their addresses or in any way attempt to enter an appearance in this action. At best, they each lent their names to an extensive ad hominem diatribe contrived by Dr. Ricchio as a personal attack on respondent Poesnecker. None of the foregoing was submitted in accordance with the Federal Rules of Civil Procedure, and the same therefore have no evidentiary value.

Since the District Court denied subject matter jurisdiction and the United States Court of Appeals simply affirmed the District Court, counsel for Dr. Ricchio has been able to file this petition with no lower court determination of the issue of whether the interveners may legally represent the Rosicrucians to the exclusion of Dr. Ricchio and his legal counsel. Dr. Ricchio's counsel conveniently sidesteps this important matter and would have this Court accept him as the legitimate legal representative of the Rosicrucians when in fact the findings and record in the state and federal courts are quite to the contrary.

Petitioner's counsel has never entered an appearance for any natural person other than Dr. Ricchio. The "Rooker-

Feldman" doctrine cannot be circumvented by "pulling a rabbit out of the hat". The real parties in interest here have been involved since the state court action was initiated eight years ago. All members and interested persons of all the incorporated and unincorporated Rosicrucian entities were kept fully apprised of the status of the litigation at all times, or had full access to current information. No party in interest can in good faith suggest that he or she was excluded from that process. To suggest that the Grand Fraternity Rosae Crucis was not a party in the state court is illusory if not fraudulent.[3]

II.

DOES PETITIONER'S FILING OF A FEDERAL COMPLAINT PRIOR TO THE COMPLETION OF THE STATE LITIGATION AFFECT THE RESULT IN THE PRESENT ACTION?

Petitioner (Dr. Ricchio), would like to assert that by filing the present federal action before the completion of the parallel state litigation, he can effectively sidestep the long standing authority which is embodied in the "Rooker-Feldman" doctrine. He argues that there was no "final state court judgment" which would be reviewable and therefore that the federal courts were not divested of subject matter jurisdiction as found by Judge Broderick.

Without reviewing in detail the citations that apply under the "abstention" doctrine, it is clear that a litigant should not be entitled to avoid the effect of the "Rooker-Feldman" doctrine

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3. As Judge Broderick observed (Petition Appendix A11 to A12), even as a plaintiff Dr. Ricchio pled that the affiliated corporations are " 'interdependent with and inseparable from the Rosicrucians' " and that this may "obviously effect who may now lead the Rosicrucians and who may be entitled to bring an action in the name of the Rosicrucians".

by the expedited filing of a federal action when an adverse and final state adjudication is imminent. In this particular matter, Dr. Ricchio was fully aware when he filed the present action that the Pennsylvania Commonwealth Court had already denied his request for injunctive relief to enjoin the holding of the court ordered plebiscite. His obvious tactic was to race to the filing of the federal action in order to avoid the clear mandate of "Rooker-Feldman".

In an obvious attempt to force a reversal of the numerous state court decisions that excluded him from control of the Rosicrucians, Dr. Ricchio sought a basis for sabotaging or at a minimum at least a basis for invalidating after the fact the court ordered plebiscite. This would leave the Rosicrucian entities in chaos and in a quandry as to who was legally in charge. He further attempted to create confusion by his filing of the present federal action under the misstated name "Grand Fraternity Rosae Crucis" using as his authority for that filing the claim that he was the Supreme Grand Master.[4]

Having thus cloaked himself with apparent authority to represent a "new" litigant, Dr. Ricchio saw in RFRA a new legal basis for accomplishing his personal agenda. Had he been aware of RFRA during the pendency of the state court litigation, he would most certainly have raised it there in his initial challenge of the plebiscite. The demise of RFRA has in effect eliminated his entire federal claim. Judge Broderick clearly had authority to dismiss the complaint based on lack of subject matter jurisdiction.

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4. In the state court action, Dr. Ricchio and his co-defendants claimed that they had only appointed him as "Temporary Grand Master".

CONCLUSION

Dr. Ricchio has admitted (p. 8) that his "primary claim arises under the First and Fourteenth Amendments to the United States Constitution", both of which have been reviewed exhaustively by the state courts and by this Court. To disregard "Rooker-Feldman" and the "Abstention doctrine" would clearly result in a reconsideration of these issues by the federal courts. The same would be inappropriate as a basis for the granting of a Writ of Certiorari. For the foregoing reasons, the Writ of Certiorari should be denied.

Respectfully submitted,

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